

REMARKS/ARGUMENTS

Claims 1-37 are pending in the present application.

This Amendment is in response to the Office Action mailed January 12, 2009. In the Office Action, the Examiner rejected claims 2-4, 6-7, 9-12, 14-15, and 31-33 under 35 U.S.C. §101. In addition, the Examiner allowed claims 17-19, 21-22, 24-27, 29-30, 34, and 36-37. Applicant has amended claims 4, 6, 12, 14, 32, 33, and 35; and added new claim 38. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Claim Objections

In the Office Action, the Examiner objected to claims 32-33, and 35 for minor informalities. Applicant has amended claims 32-33, and 35 as suggested by the Examiner.

Rejections under 35 U.S.C. §101

In the Office Action, the Examiner rejects claims 4, 6, 12, and 14 and their associated dependent claims under 35 U.S.C. §101 as not falling within one of the four statutory categories of invention. Specifically, the Examiner contends that the instant claims neither transform the underlying subject matter nor positively recite structure associated with another statutory category, and therefore do not define a statutory process (Office Action, page 3, paragraph 4). The Examiner contends that there is no physical transformation that takes place in the claims, only a data-domain manipulation of abstract model value, or the algorithmic steps recited do not reference that they are performed by any type of physical hardware (Office Action, page 3, paragraph 4). Applicant respectfully disagrees for the following reasons.

A claimed process is surely patent-eligible under §101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Diamond v. Diehr*, 450 U.S. 175, 192 (1981); *Parker v. Flook*, 437 U.S. 584, 589 (1978). The claim is not required to involve any transformation of the underlying physical object that the data represented. *In re Bilski*, 545 F.3d 943, 88 U.S.P.Q.2d 1385 (2008). The *Bilski* court further states that “[s]o long as the claimed process is limited to a practical application of a fundamental principle to transform specific data, and the claim is limited to a visual depiction that represents specific physical objects or

substances, there is no danger that the scope of the claim would wholly pre-empt all uses of the principle.” *In re Bilski*, 545 F.3d 943, 88 U.S.P.Q.2d 1385 (2008).

Here, claims 4, 6, 12, and 14 recite, among other things, (1) calculating estimated weights for identified errors in recognition of utterances based on a reference string; (2) marking sections of the utterances as being misrecognized and associating the estimated weights with the sections of the utterances. The claimed process therefore at least transforms or converts the utterances into estimated weights, or a recognized string, or sections of the utterances. “Utterances” are physical entities. An utterance represents a unit of spoken words. It represents a tangible entity or a physical object in that it can be heard or it generates pressure vibrations in the air. In addition, the “reference string” (recited in claims 4, 6, 12, and 14) or the “recognized string” (recited in claims 12 and 14) is data representing the physical object (the utterance or the spoken words). It is a visual depiction of a physical object. Accordingly, claims 4, 6, 12, and 14 are statutory under the transformation test.

However, in the interest of expediting the prosecution of the case, applicant has amended claims 4, 6, 12, and 14 to clarify the claim language. The amended claims include the recitation “utterance of a speaker” and “the utterances being received by a speaker input and converted to digital signals”. Since a speaker input (e.g., a microphone) is a particular machine or apparatus, and the conversion of the utterances to digital signals represent a transformation, the claimed process is therefore tied to a particular machine or apparatus, or transforms a particular article into a different state or thing.

Applicant believes that amended claims 4, 6, 12, and 14 and their associated dependent claims are statutory under 35 U.S.C. §101. Accordingly, Applicant respectfully requests the rejections under 35 U.S.C. §101 be withdrawn.

Allowable Subject Matter

Applicants note with appreciation the Examiner’s indication of allowable subject matter for claims 17-19, 21-22, 24-27, 29-30, and 36-37. Applicant has added new claim 38 without introducing new matter. Since new claim 38 is dependent on allowable claim 14, applicant believes that new claim 38 is allowable. In light of the above amendments and arguments, Applicant believes that claims 2-4, 6-7, 9-12, 14-15, 31-33, and 38 are also allowable.

Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: January 26, 2009

By / THINH V. NGUYEN /

Thinh V. Nguyen

Reg. No. 42,034

Tel.: (714) 557-3800 (Pacific Coast)

12400 Wilshire Boulevard, Seventh Floor
Los Angeles, California 90025